

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.38284 of 2007

Date of decision: 10th February, 2016

Bhajan Singh and another

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. R.S. Kang, Advocate
for the petitioners.

Mr. Gurveer Sidhu, Asstt. Advocate General, Punjab
for the respondents.

FATEH DEEP SINGH, J.

Through this petition under Section 482 Cr.P.C., petitioners Bhajan Singh and Kuldeep Singh have both sought quashing of the FIR bearing No.346 dated 13.12.2006 under Section 420 IPC pertaining to Police Station Payal so registered against them by respondent No.2 Gurmeet Singh.

The intricate question that is sought to be raised during the course of arguments by the respective counsel for the parties could be appreciated if the very background of this dispute is elaborated and well brought out as it will facilitate better determination of the same.

Petitioner Bhajan Singh claims that he is owner and in possession of $\frac{1}{2}$ share of the land measuring 43 Kanals 6 Marlas i.e. 21 Kanals 13 Marlas, of land measuring 33 Kanals 2 Marlas i.e. 16 Kanals 11 Marlas and of the land measuring 6 Kanals 1 Marla i.e. 3 Kanals $\frac{1}{2}$ Marla, fully detailed and described in the petition, situated within the revenue estate of village Bhaurla, Tehsil Samrala, District Ludhiana. A dispute had arisen between petitioner No.1 Bhajan Singh and his brother Ujjagar Singh, as a consequence of which a suit for joint possession was preferred on the grounds of being Joint Hindu Family coparcenary property in which, after filing of the suit, on 05.01.1994 an ad-interim injunction was granted against construction thereon. The suit was thereafter dismissed in default on 17.07.1998 (Annexure P1). For interim relief, a revision petition under Section 16 of the Punjab Land Revenue Act was preferred by Ujjagar Singh before Collector, Ludhiana and thereafter orders dated 07.04.1997 were passed by AC-Grade-I, Samrala whereby he had sanctioned mutation No.992 pertaining to Jagir Singh son of Mehtab Singh, who happens to be father of petitioner No.1 Bhajan Singh as well as said Ujjagar Singh. It is in this, a compromise was arrived at between the parties on 29.05.2001 by way of Annexure P2. It is the precise allegation that petitioner Bhajan Singh entered into an agreement to sell (Annexure P3) pertaining to 82 Kanals 9 Marlas of this land with Gurmeet Singh complainant/respondent No.2 at the rate of ₹31,75,000 per acre and out of which he received ₹22.00 lacs as earnest money, undertaking to execute the sale deed and receive the balance amount

on or before 30.06.2006. It is worthwhile to refer here that the land in question was earlier mortgaged with the Samrala Primary Cooperative Agricultural Development Bank Limited, Samrala and Bija Multipurpose Cooperative Society Limited, village Bija, Tehsil Khanna, District Ludhiana and which loan was cleared on 27.06.2006 and 23.06.2006 respectively.

A dispute had arisen between the alleged vendor and the alleged vendee and thereafter, a civil suit (Annexure P4) was filed by petitioner No.1 Bhajan Singh in the Court of learned Additional Civil Judge (Senior Division), Samrala for declaration as well as injunction over this agreement to sell (Annexure P3). It is in consequence thereof, respondent No.2 filed a complaint before the authorities on 11.08.2006 leading to registration of the present FIR on 13.12.2006. In the said criminal case it were the allegations that the Court had passed injunction orders against petitioner No.1 which was never there on the jamabandi handed over to him at the time of execution of the agreement to sell which was subsequently revealed to him and thus, claimed that petitioner No.1 has acted in a dishonest manner and therefore cheated him whereas petitioner No.2 had signed this agreement as an attesting witness, and thus, his complicity thereon. It is in the light of the same, petitioners have sought quashment of the same that it was a pure simplicitor civil dispute which has been given the colour of a criminal offence.

Appreciating the arguments of learned counsel for the parties, Mr. R.S. Kang, Advocate representing the petitioners and

Mr. Gurveer Sidhu, Asstt. Advocate General, Punjab on behalf of the respondents and on perusal of the records. As far as the factual elements of the petition are concerned regarding the dispute of petitioner Bhajan Singh with his brother Ujjagar Singh, their compromise, the factum of property being under mortgage and its redeeming with appropriate dates and filing of a suit by petitioner Bhajan Singh against complainant Gurmeet Singh and that it was during the pendency of the suit present FIR was got registered, are matters which have never been put to dispute. Thus, the million dollar question that erupts out of this dispute, is if an offence of cheating as defined under Section 415 IPC as has been made out or not?

The definition assigned to 'cheating' is when a person deceives another person fraudulently or dishonestly induces any person so deceived, to deliver any property to him or to consent that he will retain any property, or intentionally induces the person so deceived to do or not to do anything which he would not do or omit if he was not so deceived, holding out that such an act or omission causes or is likely to cause damage to that person in body, mind, reputation or property. Therefore, the very essence is implied from the conduct of the person, which may be direct or indirect depending upon case to case, for which no hard and fast rule can be laid down by the courts. It has to be, at the same time, made clear that the very breach of contract cannot give rise to criminal prosecution and to the mind of this Court the only line of distinction that can be laid is depending upon the very intention of the accused at the time of alleged inducement.

It is the own stand of the complainant that the land was under mortgage at the time of execution of agreement to sell and it is not the case of complainant that the accused Bhajan Singh has hidden this fact from him and that he was made to understand otherwise and that too, when the complainant claims that he got a copy of the jamabandi on 29.06.2006 from the Halqa Patwari he came to know of the same. Whereas on 30.06.2006, the property had been redeemed on that very day i.e. the next day when the complainant claims that he had secured a copy of the jamabandi. More so, at the time fixed for execution of the sale deed i.e. 30.06.2006, the property had ceased to be under a charge and there is a rider laid in the agreement to sell that in case of failure of the vendor to execute the sale deed, the vendee shall be at liberty to get the same executed through Court by depositing the balance amount in the absence of vendee. Thus, to the mind of this Court, the FIR having been registered on 13.12.2006, much after the property has ceased to be under charge, and that too, after the parties have approached the Civil Court; are matters which have a strong bearing on the mind of this Court that it is a pure civil dispute which is being given the colour of a criminal offence. Even otherwise, under the principle of "*buyer beware*", it was the bounden duty of the complainant to have verified the antecedents of the property before entering into the agreement to sell and it is nobody's case, as has been projected before this Court during the course of arguments, that the accused has denied to return the money or to execute the sale deed. Though it does not mean that the criminal

courts are barred from initiating such action where criminality is involved but keeping in view the hairline difference and in view of these circumstances, it emancipates that there is a clear and clear misuse of the process of the Court by the present complainant to attain a sinister design and to obviate the course of justice, especially when nothing is attributed to petitioner No.2 who has purely signed as a witness to identify the executants of this agreement to sell and therefore cannot be burdened with any criminal liability.

Thus, in the totality of what has been detailed and discussed above, it is a situation where exceptional circumstances have arisen necessitating exercise of inherent powers of this Court whereby FIR No.346 dated 13.12.2006 registered under Section 420 IPC at Police Station Payal along with all consequences qua the petitioners are set aside by way of acceptance of the instant petition.

(FATEH DEEP SINGH)
JUDGE

February 10, 2016
rps